

Libby Asbestos Superfund Oversight Committee (LASOC)

Site Funding and Budgets Report

(Report Date: July 13, 2021)

Purpose:

During the 2017 Legislative Session, Senate Bills 20 and 315, passed and signed into law, established a Libby Asbestos Superfund Advisory Team, created the Libby Asbestos Cleanup Trust Fund and operation and maintenance accounts, and authorized transfer of funds to the Environmental Quality Protection Fund. In 2019, HB 30, sponsored by Representative Gunderson, passed and signed into law, amended section 75-10-1601 Montana Code Annotated, 72-10-1604 MCA, and repealed 75-10-1602 MCA. The primary changes included: renaming the Libby Asbestos Superfund Advisory Team to Libby Asbestos Superfund Oversight Committee (LASOC), adding duties to LASOC, and removing a Liaison position.

Expanded duties included:

- Monitoring Site activities,
- Assisting in implementing final cleanup and long-term operation and maintenance (O&M) plans,
- Reviewing documents, and providing comments and recommendations to DEQ, local government, and federal agencies regarding the Site,
- Assisting in preparation and dissemination of reports and other information, and
- Initiating and striving to maintain negotiations with DEQ, EPA and other entities with a goal of reducing the State and Federal roles in the long-term operation and maintenance work at the Site while increasing the role of Lincoln County in expending funds and managing and implementing O&M activities.

Prior duties to provide recommendations to DEQ regarding the administration of the Libby Asbestos Trust Fund, and the Libby Asbestos Cleanup Operation and Maintenance Account remained unchanged.

The purpose of this document is to assist LASOC in discharge of their oversight duties by identifying and presenting:

- Site funding sources,
- Review of expenditures and budgets on a regular basis in a consistent fashion, and
- Analyses, as appropriate, to guide LASOC.

This document is also intended to serve as a basis for required annual reporting to the Environmental Quality Council (EQC), and to be a summary document for public information.

Site Roles

US Environmental Protection Agency

EPA has the lead role overall for this Superfund Site. They are responsible for characterization of conditions, remedy selection, cleanup, and O&M planning.

Montana DEQ

Montana DEQ collaborates and shares responsibilities with EPA for overall activities at the Site, and is the lead agency for Operable Units (OUs) as they enter the O&M phase.

Lincoln County

Lincoln County has no direct responsibility for the conduct of Superfund activities at the Site, but collaborates closely with both EPA and DEQ in planning, reviews, implementing institutional controls, and being the local focal point for property owner and community needs as the OUs move into O&M. The establishment of LASOC is a recognition of the important role of the County.

Funding Sources

Investigation and Cleanup Phases

Traditional Superfund funding and W.R. Grace funds¹ represent EPA's primary revenue sources for Site activities, which hence are the primary sources of funding for State activities. With the major exception of the Grace Mine site (OU3), the investigation and cleanup phases are complete. While some attention is given herein to these important remaining activities, the primary focus of this document is on the O&M phase now applicable to most of the OUs².

DEQ performs management activities to support EPA at the Libby Asbestos Superfund site through the EPA CA Sitewide V-97841901. This funding covers DEQ's management activities Sitewide, and formerly included OU's 1, 2, 4, 5, 7, and 8 until they transitioned into O&M. For the period of April 20, 2009 to May 31, 2022 DEQ has been awarded \$9,706,508.

¹ EPA entered into an agreement with Grace in 2008 whereby they paid \$250 million to cash out its liability for the Libby site with the exception of the Libby Mine and contamination migrating from the mine. EPA deposited the \$250 million into a special account and has used these funds to pay for response actions at Libby. EPA entered into administrative orders with WR Grace whereby the company is currently performing work at the Libby Mine (OU3).

² However, it is important to note that unused cleanup funds designated for use on the Site, such as the unused Grace cleanup funds are potentially available for O&M needs (discussed below).

Also, DEQ, as the support agency, performs management and technical assistance for OU3, including remedial investigation and feasibility study activities, through EPA CA V-96882401. For the period of October 1, 2019 to September 30, 2023 DEQ has been allocated \$990,356.

Besides the funding component of oversight, LASOC also has defined duties related to the overall Site activities, which include the ongoing work at OU3.

Operation and Maintenance Phase

Four funding sources that are or may be available to the State and County for O&M activities are described below. Some of the requirements for use of the funds are limited based on settlement agreements or appropriation of money. LASOC has a role and duty to provide input to DEQ in the use of funds. The current focus of the discussion is for those OUs that are in the O&M phase, especially OUs 4 and 7 (Libby and Troy). Future considerations will be required related to OU3 especially.

State- W.R. Grace Bankruptcy Settlement Funds

The State of Montana DEQ received \$5,167,000 as part of their 2008 bankruptcy settlement with W.R. Grace. These funds with all interest and earnings were stipulated to be used “only for the State’s CERCLA cost share requirements, including operation and maintenance expenses, and other costs related to asbestos at the Site.”³ (These funds are held in the Libby Asbestos Settlement Fund 08230.)

State- Orphan Share Account Transfer

In the SB 20 legislation, DEQ received an appropriation for \$600,000 from an Orphan Share account beginning July 1, 2018 State Fiscal Year 2019 (SFY 2019). In addition, SB 315 provides a framework for how the money can be used, including the establishment of the permanent Libby Asbestos Cleanup Trust Fund (Fund 09033) to pay exclusively for costs to the State for cleanup and long-term O&M at the Site. SB 315 also sets out the usage of The Libby Asbestos Cleanup Operation and Maintenance Account, a state special revenue fund (Fund 02130), also dedicated to cleanup and long-term maintenance costs at the site and administrative costs (including LASOC).

The distribution of the Orphan Share funds is summarized as follows:

- 20% of the funds (\$120,000) allocated directly to the Trust Fund (Fund 09033)
- 80% of funds (\$480,000) allocated to Cleanup Operation and Maintenance account (Fund 02130)
 - No more than 25% of these funds (maximum of \$120,000) may be used for administrative purposes.

³ July 21, 2008, US Bankruptcy Court, District of Delaware, approved *Stipulation Resolving Claims of Montana Department of Environmental Quality*.

- Any remaining 02130 funds not spent each fiscal year are transferred to the permanent Trust Fund.

Access to the Trust Fund monies (Fund 09033) begins in 2029, at which time there will no longer be a Libby Asbestos Cleanup and Operations Account (Fund 02130), and the transfer of Orphan Share money will sunset. The cumulative funding from the Orphan Share transfers will be \$6 million, excluding interest and earnings.

In summary, \$120,000 go directly each year to the Trust Fund, and the remaining \$480,000 annual allocation goes to the Cleanup and Operation Account, with any unused monies being annually transferred to the Trust Fund. These funds are graphically depicted in Attachment 1.

Federal- EPA O&M Funds

EPA has about \$12 million in O&M funds for all operable units excluding OU3 (mine site) and OU6 (funded by BNSF). This money was set aside at the time of bankruptcy settlement to assist in paying for O&M costs. This money is held by EPA, and thus carries restrictions for being used for those activities that EPA considers appropriate for O&M. DEQ accesses this money through cooperative agreement grants with EPA, and subsequently funds the Lincoln County Asbestos Resource Program (ARP) through a separate agreement between DEQ and Lincoln County. In addition, EPA will have their own charges to this funding source for administration and oversight.

Federal- Unused Grace Cleanup Funds (EPA)

In 2018 Lincoln County and the State of Montana requested that EPA make any remaining EPA-held remedial action settlement monies available to the State and Lincoln County. Doug Benevento, then the EPA Region 8 Regional Administrator, committed in a December 19, 2018 letter to Montana Governor Bullock that the remaining remedial action funds would be held and be available for the State of Montana and Lincoln County to supplement the \$12M O&M fund once the \$12M fund has been expended. These remaining funds will be held by EPA and can be spent on activities EPA deems appropriate for O&M on the Site.

An unofficial estimate of the remaining funds is about \$20 million, though estimates have varied from about \$12 to \$20 million over the last several years. EPA is still finalizing accounting of expenditures from the funds. LASOC and DEQ will continue to regularly query EPA for an official estimate of the value. Regardless, this likely represents a significant potential source of funding if or once the other Federal controlled funds are exhausted.

Expenditures and Balances

Investigation and Cleanup Phases

The two funding sources for DEQ described above are the EPA CA Sitewide V-97841901 and EPA CA V-96882401, for Sitewide and OU3 activities, respectively. The following tables present award allocations, expenses to date, and balances.

Libby Sitewide Cooperative Agreement			Project Period: 04/20/2009-05/31/2022
Org Unit	DEQ Allocation of Award	Expenses to Date	Current Balance
474610 Libby Sitewide	\$7,961,155.93	\$7,890,625.28	\$70,530.65
474613 Libby Sitewide RI/FS 03	\$1,428,972.00	\$1,330,014.74	\$98,957.26
474615 Libby Sitewide RI/FS 05	\$222,643.07	\$224,479.03	(\$1,835.96)
474616 Libby Sitewide RI/FS 06	\$93,737.00	\$17,390.73	\$76,346.27
TOTAL OF V-97841901 AWARDS AND EXPENSES	\$9,706,508.00	\$9,462,509.78	\$243,998.22

Libby Asbestos OU3			Project Period: 10/1/2019-9/30/2023
Site Name	Total Awards	Expenses to Date	Current Balance
474633 Libby OU3	\$990,366.00	\$431,353.42	\$559,012.58
TOTAL OF V-96882401 AWARDS AND EXPENSES	\$990,366.00	\$431,353.42	\$559,012.58

Operation and Maintenance Phase

State- W.R. Grace Bankruptcy Settlement Funds

The following table shows recent expenditures and the balance for this fund (Fund 08230):

Libby Asbestos Settlement (Fund 08230)	Fund Balance (05/31/2021)	Expenditures FY19 & 20	Expenditures FY21
Libby Settlement	\$5,232,699.48	\$110,397.80	\$12.95
Libby Mediation Costs (<i>reimbursement expected</i>)		\$935,849.00	\$274,779.02
Total	\$5,232,699.48	\$1,046,246.80	\$274,791.97

There was \$480,000 allocated from this account for FY 2018 for oversight and support of the (then named) Advisory Team, since the 2015 SB315 appropriation and transfer would not start until July 1, 2018 (SFY 2019).

Because this money is held by the State of Montana per the terms of the bankruptcy settlement, the state has discretion regarding the activities the money could be used for, as long as they pertain to the Libby Asbestos site. DEQ has used this funding source for current OU3 bankruptcy litigation, which is anticipated to be reimbursed.

State- Orphan Share Account Transfer

The following table for the Trust Fund (Fund 09033) shows revenue from SFY 2021, and balance are the close of last fiscal year, and the current balance:

Libby Asbestos Cleanup Trust (Fund 09033)	Fund Balance (06/30/2020)	SFY 2021 Revenue	Current Fund Balance
530025 STIP Participant Earnings	\$19,976.39	\$2,598.10	\$22,574.49
582825 Income Transfers-Nonbudgeted	\$360,000.00	\$120,000.00	\$480,000.00
582852 Income Transfers	\$936,651.39	\$0.00	\$936,651.39
TOTALS	\$1,316,627.78	\$122,598.10	\$1,439,225.88

Additionally, the following table for the Cleanup and Operation and Maintenance Account (Fund 02130) shows annual allocations into the fund, SFY21 current (May 2021) and projected expenditure, and cumulative expenditures for SFY18-20. The zero-dollar projected balances for SFY21 reflect the sweep of unused funds at year end into the Trust Fund.

Libby Asbestos Cleanup and Operations Account (Fund 02130)	Allocated Annually	Expenditures FY21	Projected FY21 Expenditures	Projected Balance FY21	Expenditures FY18 – 20
Personal Services	\$22,400.00	\$14,799.01	\$22,400.00	\$0.00	\$21,310.36
Operating Expenses	\$5,376.00	\$3,522.12	\$5,376.00	\$0.00	\$18,217.11
Transfer to Trust 09033	\$402,224.00	\$0.00	\$402,224.00	\$0.00	\$936,651.39
Lincoln County MOA	\$25,000.00	\$3,147.31	\$25,000.00	\$0.00	\$0.00
Fund reimbursement	\$25,000.00	\$0.00	\$25,000.00	\$0.00	\$0.00
TOTALS	\$480,000.00	\$21,468.44	\$480,000.00	\$0.00	\$976,178.86

Federal- EPA O&M Funds

Grant awards to DEQ and expenses for the EPA CA V-96841701 for O&M activities for the period of March 2017 to the end of May 2022 are shown in the following table:

Libby Asbestos OU1 and OU2 Operations and Maintenance Activities			Project Period: 03/15/2017-05/31/2022
Site Name	Total Awards	Expenses to Date	Current Balance
474621 Libby O&M OU1	25,203.00	8,277.07	16,925.93
474622 Libby O&M OU2	25,204.00	6,612.23	18,591.77
474625 Libby O&M OU5	84,438.00	516.62	83,921.38
474620 Libby O&M (OU 4 & 7)	600,000.00	276,789.83	323,210.17
474624 Libby O&M OU8	15,000.00	390.40	14,609.60
TOTAL OF V-96841701 AWARDS AND EXPENSES	749,845.00	292,586.15	457,258.85

It is important to note that this information is limited to the funds coming into DEQ (some of which also go to Lincoln County ARP). While this is important to monitor and manage the DEQ (and therefore Lincoln County) draws on the fund, this current level of information does not address the level of funds that have been spent from the original \$12 million fund by EPA, who can access these funds for their O&M administration and oversight efforts.

Efforts will be made to obtain information from EPA regarding the past expenses paid by this fund and the current balance.

Federal- Unused Grace Cleanup Funds- EPA

As previously described, the balance of these funds and their contingent, prospective use for O&M activities by the State and Lincoln County has not been determined.

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Attachment 1. Flow of State Orphan Share Account Transfers

